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Testimony of Jean Mills Aranha, Connecticut Legal Services, Inc. In Opposition to Section 4 of SB 154 and Commenting on Sections 1, 3 and 14: An Act Concerning Probate Court Operations February 21, 2014

To Senator Coleman, Representative Fox and Members of the
Judiciary Committee:

My name is Jean Mills Aranha; I am an attorney working in the Elder Law and Public Benefits Units of Connecticut Legal Services in Stamford. I submit this testimony in opposition to the provisions of Section 4 and to comment upon Sections 1, 3 and 14 of Senate Bill 154, on behalf of the legal services programs in Connecticut, the Connecticut Legal Rights Project and the low income individuals we serve.

Section 4: Revision of Section 4a-17 of the General Statutes Should Not Weaken Due Process Protections for Persons Confined to Psychiatric Institutions

Section 4 of this bill makes changes to Section 4a-17 of the general statutes. This statute currently provides due process protections for persons confined to psychiatric institutions when they are involved in or have property affected by a civil lawsuit. While the protections in the current statute are not as strong as we would like to see, the changes proposed in this bill weaken them further, and we are opposed to those changes.

Section 4a-17 provides for additional mailings of service of process for individuals confined to psychiatric institutions, to assure that persons so confined have actual notice of civil actions to which

they are parties, or in which their property interests are affected. Unfortunately, there is no penalty for failure to comply with the statute, but if a court finds it has not been complied with, the court must order compliance. We would prefer to see this portion of Section 4a-17 strengthened; at a minimum, the protections of the statute which do exist now should not be weakened as proposed in Section 4 of SB 154.

Section 4 changes the statute to provide notice only where a person is a party, removing the protections for a person whose property interests may be affected by a lawsuit. Further, it removes the requirements that the mailing to the confined person at the institution be done by registered or certified mail and that the superintendent of the institution deliver a copy of the process to the confined individual, so there is no longer any guarantee that the individual will actually receive the notice.

Finally, the requirement of sending copies to the Commissioner of Administrative Services has been deleted. This means property belonging to an individual who has received public benefits from the State may be lost in a lawsuit without any opportunity for the Commissioner to protect the State's interest in recovery from that property.

All of these changes reduce the likelihood that some very vulnerable citizens will receive actual notice of a lawsuit in which they are vitally interested – an eviction, for example. When we met with Probate Court Administration to discuss this bill, we understood that it wanted to clarify a confusing statute. These changes do far more than that. To simplify the statute in the way proposed in Section 4 would have the unfortunate result of needlessly limiting the due process rights of individuals confined to psychiatric institutions. Furthermore, this is not a Probate Court statute. It was last amended in 2007 in P.A. 07-148, An Act Concerning the Department of Mental Health and Addiction Services, without any of these limiting changes. The certified or registered mailing of an extra set of papers is not an undue burden on someone pursuing a lawsuit, nor is requiring the superintendent to make certain that the confined person actually receives the papers an onerous responsibility, especially when weighed against the possibility

that a disabled person may miss the opportunity to defend himself or his property interests because he is confined to a psychiatric institution.

If revision to Section 4a-17 is needed, we suggest alternate amended language which is attached to my testimony.

Section 14: Right of Transfer of Conservatorship Files Should be Extended to Formerly Conserved Persons

Section 14 of the SB 154 bill revises Section 45a-661 of the general statutes, concerning the transfer of conservatorship files when a person under conservatorship has moved to another probate district. This is of particular concern to our clients, as they have limited resources to travel long distances to attend hearings.

We support the change to the statute which requires the transfer of a file once the Probate Court has determined that the requested transfer is the preference of the person who is the subject of a conservatorship.

We believe, however, that this right should extend to individuals who are no longer under conservatorship, but who have outstanding proceedings to be conducted. Individuals are frequently conserved while in the hospital, which may not be located in the district of their residence. They may recover and have the conservatorship terminated. If they have moved back home or to a new residence, they should have the option of having the accounting proceedings, for example, heard in their home district.

Probate Court Administration has expressed to us that this is an unusual situation, but the inclusion of these cases could be accomplished with the simple insertion of a few words. We propose that where Section 45a-661 refers to "any person under voluntary or involuntary representation" or "the person under conservatorship" be changed to read "any person now or formerly under voluntary or involuntary representation" and "the person now or formerly under conservatorship."

Sections 1 and 3: Admissibility of Medical Records Is Subject to Objection under the Rules of Evidence

Section 1 revises Section 17a-498 of the general statutes, concerning hearings on commitment proceedings. Paragraph (h) is added, to make it clear that the rules of evidence apply in such hearings. As a result of the addition of paragraph (h), subparagraph (b) (2) is being amended in part as follows:

Notwithstanding the provision of sections 52-146d to 52-146i, inclusive, and subject to the rules of evidence as provided in subsection (h) of this section, all such hospital records directly relating to the [patient] hospitalized respondent shall be admissible at the request of any party of the [Court of] Probate Court in any proceeding relating to confinement to or release from a hospital for psychiatric disabilities. [Nothing herein shall prevent timely objection to the admissibility of evidence in accordance with the rules of evidence.]

We have no objection to the express reference to the rules of evidence. We were concerned that the deletion of the sentence concerning timely objection to the admissibility of hospital medical records could be interpreted to mean that such records would be admissible without objection. In fact, there are many valid objections which can be made to the admission of hospital records, including hearsay and relevance objections. Section 3 of SB 154 contains parallel language in revising Section 17a-510 of the general statutes, concerning release from commitment.

When we discussed these Sections with Probate Court Administration, we were assured that that there was no intent to limit objections to the admission of hospital records; rather these are technical revisions proposed to make clear that the rules of evidence apply to these statutes. The phrase "and subject to the rules of evidence as provided in subsection (h) of this section" was added to each section to alleviate our concern and make clear that objections would not be prevented or limited by these revisions. We appreciate this clarification of intent by Probate Court Administration and wanted to make it part of the record here.

Thank you for your time and attention.

Attachment to Testimony of Jean Mills Aranha on SB 154

Suggested Amendment to Section 4a-17 by Connecticut Legal Services, Inc. and the Connecticut Legal Rights Project

Section 4a-17 of the general statutes is repealed and the following is substituted in lieu thereof: (Language from the current statute which SB154 removes but which we would retain is shown in ALL CAPITALS; our further additions are shown in **bold**.)

(a) IN any action or proceeding in any court TO WHICH ANY PERSON confined by order of any court, or as provided by section 17a-502 or 17a-506 in any institution for persons with psychiatric disabilities in this state IS A PARTY OR WHICH AFFECTS OR RELATES TO THE PROPERTY RIGHTS OF ANY SUCH PERSON, a copy of all process, notices and documents required to be served upon such confined person [either personally or at such confined person's abode or by mail] by means other than personal service shall be sent BY REGISTERED OR CERTIFIED MAIL to such confined person at the institution where such person is confined and to THE COMMISSIONER OF ADMINISTRATIVE SERVICES AT HARTFORD. [.] ANOTHER COPY THEREOF SHALL BE SO MAILED TO THE SUPERINTENDENT OF THE INSTITUTION WHERE SUCH PERSON IS CONFINED OR LEFT WITH THE SUPERINTENDENT OR THE SUPERINTENDENT'S REPRESENTATIVE AT HIS OR HER OFFICE, AND ANOTHER COPY THEREOF **SO MAILED TO** [SERVED UPON] THE SUPERINTENDENT OF SUCH INSTITUTION OR THE SUPERINTENDENT'S REPRESENTATIVE, FOR SUCH CONFINED PERSON, AND AS SOON THEREAFTER AS PRACTICAL AND REASONABLE, SUCH SUPERINTENDENT OR SUCH SUPERINTENDENT'S REPRESENTATIVE SHALL DELIVER SUCH COPY TO SUCH CONFINED PERSON. Whenever service or notice is required by publication only, two copies thereof shall be sent to the superintendent of the institution by registered or certified mail, and one copy shall also be so mailed to the Commissioner of Administrative Services at Hartford; and such superintendent or such superintendent's representative shall deliver one copy thereof to the confined person as soon as practical and reasonable. Such mailing along with proof of delivery shall satisfy and be deemed equivalent to any requirement under law for service of such process, notices or documents by means other than personal service. A copy of all process, notices or documents that are required to be served personally on such confined person shall be sent by first class mail to the superintendent of the institution where such person is confined, in addition to being served personally on such confined person.

(b) No action or proceeding shall abate because of any failure to comply with the provisions of this section, but the court before whom any such action or proceeding is pending shall, upon finding noncompliance with any of said provision, order immediate compliance with said provisions.

